

## SECTION VI.

### Construction Prime Contracts

BBC examined prime contractor participation in ITD transportation construction contracts. As discussed below, transportation construction contracts tend to be large (below \$50,000, contracts go through Procurement). Even though many small contractors perform both subcontracts and prime contracts, and certain requirements such as construction licenses pertain to both sets of work, other barriers may apply when competing for transportation prime contracts. This section examines both qualitative and quantitative information related to prime contracting.

#### Qualitative Information on Prime Contracting in the Transportation Construction Industry

Based on in-depth interviews and surveys with business owners and managers, interviews with trade associations, and review of ITD bid processes, the study team identified several possible barriers to participation as prime contractors for transportation work.

**General comments.** Several contractors reported that “the big 10” prime contractors in the area receive all ITD work, which was reported to be somewhat discouraging to other contractors. When BBC examined the firms receiving the most contract dollars, we found that the top ten firms received 58 percent of the construction contract dollars (combining state- and federally-funded contracts) from 2002 through 2006. (Note that one of the top 10 prime contractors is woman-owned.)

**Figure VI-1.**  
**Distribution of ITD**  
**construction contract**  
**dollars 2002-2006**

Note:

Total dollars based on awards before deducting any subcontracts.

\*LeGrand Johnson Construction Company in Logan, Utah was founded by LeGrand and Renee Johnson in 1935 and continues to involve female family members in the operation of the company. The company reported that it was woman-owned in a 2007 telephone interview with BBC.

Source:

BBC Research and Consulting from data on ITD contracts.

Rank	Company	Dollars (millions)	Percent of Total Contract Dollars
1	Western Construction, Inc.	\$149	13.5%
2	Staker & Parson Companies	110	10.0
3	H-K Contractors, Inc.	84	7.6
4	Scarsella Brothers, Inc.	62	5.6
5	Central Paving	52	4.7
6	LeGrand Johnson Construction Co.*	43	3.9
7	Idaho Construction Company	40	3.7
8	Max J. Kuney Co.	35	3.2
9	Boise Concrete Sawing	34	3.1
10	Poe Asphalt Paving, Inc.	<u>32</u>	<u>2.9</u>
	Total Top 10	\$641	58.2%
	All others	<u>460</u>	<u>41.8</u>
	Total	\$1,101	100.0%

**Licensing.** With certain exceptions, construction contractors performing jobs of more than \$2,000 must be registered with the Idaho State Contractors Board or if in certain trades such as electrical, plumbing or HVAC, must be licensed with the State of Idaho Division of Building Safety. If performing public works construction (or any construction work for public entities), contractors must be licensed with the Public Works Contractors Licensing Board. The Board issues different classes of licenses according to net worth and working capital guidelines and can issue a license for Type 4 Specialty Construction that allows firms to bid as primes or subs for specialized work as long as the majority of the work is that specialization. Firms do not need a State of Idaho license to work on an Indian Reservation.

On state-funded contracts, ITD requires contractors to have the appropriate license when submitting a bid. A contractor can obtain the license after bid award on federal projects.

Many construction firms interviewed by the study team reported that the licensing process was straightforward and fair. Other representatives of construction firms and trade associations said that licensing could be a barrier. One respondent to the Availability Survey noted the difficult requirements associated with increasing a firm's public work license. Based on study team interviews, it appears that licensing requirements can slow firms from expanding into new areas or taking on larger jobs.

**Prequalification.** ITD does not normally pre-qualify contractors for construction projects.

**Minimum amount of contract to be performed by prime.** ITD's normal standard is that one-half of a construction project be performed by the prime. ITD can sometimes relax this requirement to 30 percent or to 20 percent. State law requires a minimum of 20 percent participation by the prime.

**Capital, financing and bonding.** Contractors and trade association representatives explained that operating as a highway prime contractor requires substantial capital. By state law, ITD requires performance as well as payment or bonds on its public works contracts (state statute also requires bid bonds). Several interviewees attributed the lack of DBE prime contractors to the capital required to bid as a prime. "DBEs are undercapitalized to be prime contractors."

Some contractors and trade associations reported that firms have moderate difficulty obtaining financing and have more trouble obtaining bonding. In some cases, interviewees indicated that minorities and women faced additional barriers than would white men. Some minority and female interviewees contrasted their experiences with those of white men that they knew. One female contractor said that it took her five years to obtain financing and she had good credit. However, it took her male friend only three months to obtain financing. She stated she has encountered barriers to obtaining financing except with the SBA. "If a white guy walks in [to a bank], his chance of getting financing is better than me walking in," reported a representative of a Hispanic trade association. Other contractors disagreed saying that race, ethnicity and gender did not put them at a disadvantage.

Some contractors were more successful when seeking financing but still had difficulty obtaining bonding. For example, WBE contractor reported that financing "has been a piece of cake" but that getting bonding "is a pain—a royal pain."

Several contractors and trade association representatives reported that obtaining financing and bonding is particularly difficult for Native American-owned firms that are located on a reservation due to concerns about sovereign immunity. If the businesses default, sureties worry that they will not be able to collect against them (which she said was not the case). A Native American contractor recounted similar experiences. This contractor was eventually able to overcome this barrier.

There are a number of initiatives in place to address financing and bonding for small contractors. ITD offers classes dealing with bonding, insurance, financing and programs on how to do business with ITD. Other local organizations such as the Hispanic Chamber of Commerce and Associated General Contractors were also cited as sources of training on bonding, financing and insurance. Several contractors indicated that ITD's training was very valuable. Some contractors who had not attended classes were still aware of this assistance. ITD also covers the cost for DBEs to attend other organizations' training.

After the USDOT DBE Bonding Assistance Program was suspended, ITD has referred DBEs to The Bond Shop in Everett, Washington. The Small Business Administration also offers bonding assistance which is available at SBA offices in Idaho.

**Insurance.** ITD requires proof of insurance for contractors performing its work. Difficulties in obtaining insurance were mentioned in the study team's industry interviews. One respondent specifically commented on difficulties for small businesses, stating: "Insurance requirements for small businesses are prohibitive." Another said ". . . insurance [costs] make it difficult to stay and grow our business."

**Specifications and inspections.** One majority-owned contractor stated that the specifications on ITD projects are too rigid and ITD is not flexible enough with contractors regarding changes. He said that he has not received any of the ITD projects he has bid on because he has to "pad" his prices to account for poor specifications and the difficulty of working with ITD. A trade association representative agreed that the specifications on ITD projects are sometimes not in line with the scope of the work.

Other contractors complained about what they viewed as a lack of flexibility and consistency in ITD inspections.

**Size of contracts.** Size of contracts was identified as a barrier to doing business with ITD. Many contractors urged ITD to "unbundle" large projects. One majority-owned firm reported that several years ago ITD broke up projects into \$1 to \$5 million pieces but does not do this anymore. His firm does not bid on \$10 to \$30 million projects.

BBC researched sizes of ITD contracts, finding that some are very large but that most are less than \$1 million. BBC identified 19 federally-funded and one state-funded construction contracts of \$10 million or more out of a total of 302 federally-funded and 204 state-funded contracts from 2002 through 2006.

In terms of dollars, federally-funded contracts are evenly split between \$1-10 million projects and those that are \$10 million and larger. Contracts of \$1-10 million account for most of the total dollars of state-funded contracts.

**Bidding process, paperwork and “red tape.”** Although relatively few contractors complained about the ITD bidding process or excessive paperwork required to bid, some interviewees identified certain barriers.

- One MBE subcontractor did note that the firm had the knowledge to do the job, but did not know how to submit a bid to ITD.
- A representative of a trade association for minority women indicated that relatively few of her members currently do business with ITD even though some are capable of this work. The interviewee stated that the “average individual doesn’t know how to bid, how to do paperwork ... the bidding process can be overwhelming for the average small business.” She urged ITD to offer more assistance to DBEs in preparing bids.
- One Native American organization representative was concerned about ITD introducing electronic bidding (“Bid Express”). Although she was aware that ITD has offered training to contractors (and a software credit to DBEs), she was concerned that her members had not taken advantage of these opportunities. “If our people can’t afford the software or have the technical savvy to understand how to use it, that is again a missed opportunity.” (Although she represents Native American-owned businesses, she reported that only one of her members is DBE certified.)

**Information on potential bids.** ITD widely advertises construction projects as described in Section V. Prime contractors had favorable comments about the ease of finding out about bidding opportunities, especially using the ITD website.

**Payment.** As reported in Section V, some contractors perceive ITD as “slow pay,” but not necessarily different from other public sector entities. Some point to the change order process as slowing payment.

Some contractors reported no problems getting paid for ITD projects within a reasonable time. Others say that public sector work is attractive because payment is more guaranteed. Prompt payment requirements apply to state and federal contracts.

**Working with ITD.** A number of MBE/WBE and majority-owned prime contractors had positive comments regarding working with ITD.

**Unions.** Idaho is a right to work state. The northern Idaho market works somewhat differently as some contractors come from Washington, which is unionized. Southern and southeastern Idaho have mostly non-union contractors.

**Participation of MBE/WBEs in the private sector.** A number of MBE/WBEs interviewed reported success working in the private sector. Some contractors say they prefer to work in the private sector because they are paid more promptly.

**ITD technical assistance.** Several MBE/WBE firms found ITD’s technical assistance to be very helpful. The DBE Program “brought an engineer in and helped me go through plans and learn how to read things and read the bids .... They were just really helpful in that area.” He added, “the Transportation Department has a really good system.”

ITD assistance includes:

- Workshops around the state that explain topics such as environmental issues, contract provisions, and payment issues (open to non-DBEs);
- Working to get all DBEs online including offering a rebate for software and training (\$400 if no Internet capacity, \$300 for bidding or estimating software);
- Scholarships for the “next level entrepreneurial training series” put on by the SBA (Small Business Administration) that allow DBEs to go to a 6 to 12 week training series. If they go through the series, DBEs get a \$500 marketing allowance as well; this is just one example of ITD training reimbursements and marketing allowances;
- On-line construction business management training through a state university which covers issues such as the lien laws, safety topics, HR issues, bidding and estimating. To date, there has been only one firm that has participated through ITD;
- Full reimbursement or partial reimbursement on classes, Governor’s business conference and other educational and marketing opportunities;
- Reimbursement of some expenses incurred to upgrade financial statements (e.g., \$300 reimbursement if they go to a CPA to get professional prepared financials or a bond); and
- Short-term loan program through a Native American-owned bank in Montana.

### **MBE/WBE Utilization as Prime Contractors**

BBC examined utilization of minority- and women-owned firms as prime contractors on ITD construction contracts. The utilization analysis is based on dollars that appeared to be retained by the prime after BBC subtracted dollar amounts for each subcontractor identified for the project.

**Federally-funded and state-funded prime contracts.** BBC analyzed utilization in dollars going to prime contractors for federally-funded and state-funded ITD construction projects from 2002 through 2006.<sup>1</sup>

MBE/WBEs received 33 of the 302 federally-funded contracts and obtained \$45 million of the \$502 million in work retained by the prime contractor (after deducting subcontract dollars). MBE/WBE utilization based on prime contractor dollars was 8.9 percent.

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<sup>1</sup> Because of the similarity in results before and after January 2006 for federally-funded contracts, the relatively small number of prime contracts awarded from February through December 2006 (42) and the fact that the DBE contract goals program focused for subcontractor participation, BBC analyzed MBE/WBE utilization as prime contractors on federally-funded contracts on the entire 2002 through 2006 time period. Results before and after January 2006 can be found in Figures E-52 and E-51 in Appendix E.

Minority- and women-owned firms obtained a similar share of state-funded construction prime contracts. MBE/WBEs were the prime contractors for 24 of the 205 state-funded prime contracts examined for 2002 through 2006. Of the \$174 million in contract dollars going to the primes, MBE/WBEs received 9.7 percent. White women-owned firms accounted for 8.1 percentage points of the total MBE/WBE prime contractor utilization.

Only 1 percent of the total prime contractor dollars for both federally-funded and state-funded contracts went to certified DBEs. Figure VI-2 presents overall MBE/WBE and DBE utilization as prime contractors on ITD construction projects.

**Figure VI-2.**  
**MBE/WBE share of prime contract dollars for federally- and state-funded transportation construction contracts, 2002-2006**

**Note:**

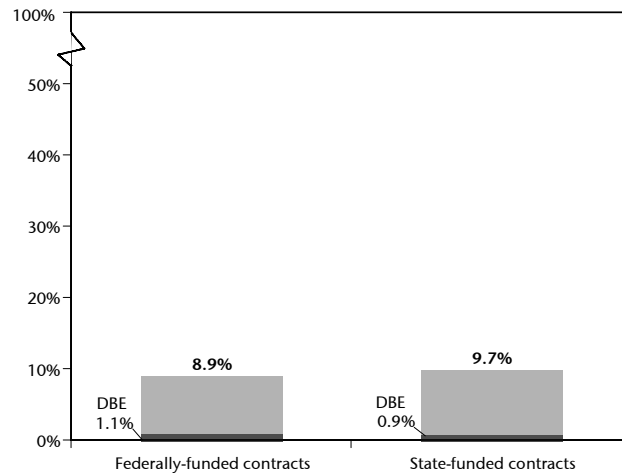
Utilization based on dollars retained by the prime contractor after deducting subcontract dollars.

For more detail and for results by MBE/WBE group, see Figures E-50 and E-92 in Appendix E.

302 federally-funded and 205 state-funded prime contracts.

**Source:**

BBC Research and Consulting from data on ITD contracts.



**Utilization of firms by race and gender group.** BBC explored the share of prime contract dollars going to each MBE/WBE group for federally- and state-funded construction projects. Figure VI-3 shows that white women-owned firms accounted for nearly all of the MBE/WBE utilization. MBEs obtained five federally-funded prime contracts for only 0.4 percent of the total dollars. Minority-owned firms were awarded seven state-funded prime contracts for 1.6 percent of the prime contract dollars.

**Figure VI-3.  
DBE and MBE/WBE share  
of prime contract dollars  
for transportation  
construction contracts,  
2002-2006, by  
race/ethnicity/gender**

Note:

Utilization based on dollars retained by the prime contractor after deducting subcontract dollars.

For more detail, see Figures 50 and E-92 in Appendix E.

302 federally-funded and 205 state-funded prime contracts.

Source:

BBC Research and Consulting from data on ITD contracts.

	Federally-funded contracts	State-funded contracts (2002-2006)
<b>MBE/WBEs</b>		
African American-owned	0.0%	0.0%
Asian-Pacific American-owned	0.1	1.1
Subcontinent Asian American-owned	0.0	0.0
Hispanic American-owned	0.2	0.1
Native American-owned	<u>0.1</u>	<u>0.4</u>
<b>Total MBE</b>	<b>0.4%</b>	<b>1.6%</b>
WBE (white women-owned)	<u>8.6</u>	<u>8.1</u>
<b>Total MBE/WBE</b>	<b>8.9%</b>	<b>9.7%</b>
<b>DBEs</b>		
African American-owned	0.0%	0.0%
Asian-Pacific American-owned	0.0	0.0
Subcontinent Asian American-owned	0.0	0.0
Hispanic American-owned	0.1	0.0
Native American-owned	<u>0.1</u>	<u>0.4</u>
<b>Total MBE</b>	<b>0.2%</b>	<b>0.4%</b>
WBE (white women-owned)	0.9	0.5
White male-owned DBE	<u>0.0</u>	<u>0.0</u>
<b>Total DBE</b>	<b>1.1%</b>	<b>0.9%</b>

## Disparity Analysis

BBC compared utilization of minority- and women-owned firms as construction prime contractors with what would be expected given MBE and WBE availability to perform this work.

**All federally-funded and state-funded construction prime contracts.** The disparity analysis results for construction prime contracts differ by MBE/WBE group

- WBE prime contractors received a share of federally-funded contract dollars roughly in line with what would be expected based on the availability of white women-owned firms to perform these prime contracts (disparity index of 94). WBEs, however, received a small share of state-funded prime contract dollars relative to their availability for these contracts (disparity index of 58).
- Utilization of Asian-Pacific American-owned firms exceeded what would be expected from availability of these firms (disparity indices exceeding 100 for both federally- and state-funded prime contracts).

- Utilization of Hispanic American- and Native American-owned prime contracts was relatively low given the availability of such firms for construction prime contract work.
- Disparity results for African American- and Subcontinent Asian American-owned firms are difficult to interpret due to the very limited availability of firms to perform construction prime contracts. The disparity indices of “100” for both groups for federally-funded contracts are based on 0 percent utilization and 0 percent availability for this work. African American- and Subcontinent Asian American-owned firms received no state-funded prime contracts but had some very limited availability for those contracts (rounding to 0.0 percent). The resulting disparity indices were 0 for state-funded prime contracts for these two groups.

**Figure VI-4.**  
**Disparity indices for**  
**MBE/WBE utilization on**  
**federally- and state-funded**  
**transportation construction**  
**prime contracts, 2002–2006**

Note:

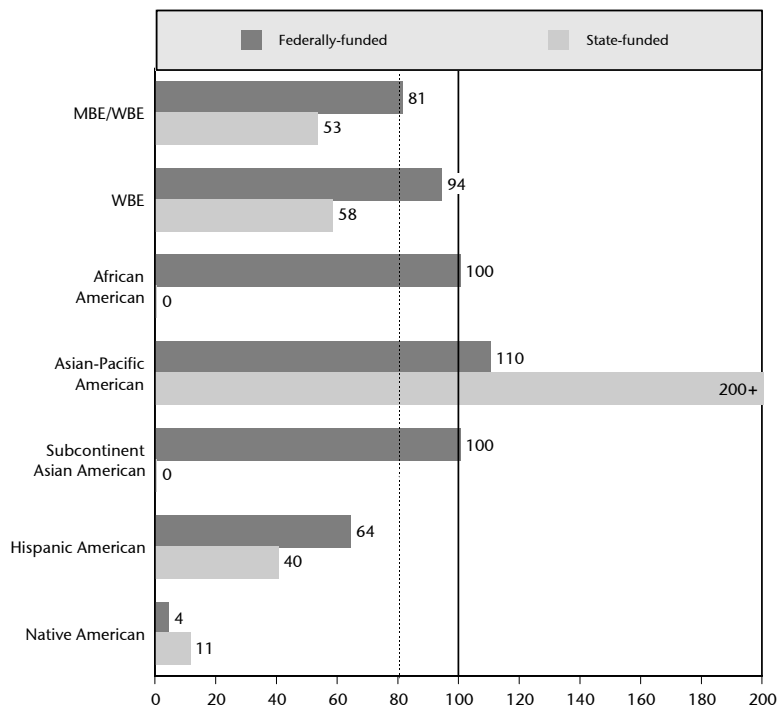
Utilization based on dollars retained by the prime contractor after deducting subcontract dollars.

For more detailed information, see Figures E-50 and E-95 in Appendix E.

302 federally-funded and 205 state-funded prime contracts.

Source:

BBC Research and Consulting.



**Small construction prime contracts.** BBC further explored the effect of contract size on MBE/WBE participation by conducting disparity analysis for construction contracts under \$1 million. Of the 302 ITD federally-funded construction contracts analyzed for 2002 through 2006, 181 were for amounts under \$1 million. BBC also examined 123 small state-funded construction contracts (out of 205 total state-funded construction contracts).

MBE/WBE utilization as prime contractors on small federally-funded and state-funded construction contracts was 12.5 percent for each set of small contracts. This level of MBE/WBE utilization as prime contractors was somewhat higher than for all federally-funded construction contracts (8.9 percent) and all state-funded construction contracts (9.7 percent).

Although utilization of minority- and women-owned firms as prime contractors was higher for small construction contracts, relative availability of MBE/WBEs to perform these contracts was greater as well. Figure VI-4 examines disparity study results for prime contractor utilization on small construction contracts.

BBC's comparison of utilization and availability for small contracts only helps to explain disparities for Hispanic American-owned firms that BBC identified when analyzing all contracts. On small construction contracts, use of Hispanic American-owned prime contractors met or exceeded what would be expected based on availability for these small prime contracts. There are still mixed results for African American- and Subcontinent Asian American-owned firms due to the very limited (and sometimes zero) availability of firms to perform these prime contracts. Utilization of white women- and Native American-owned firms still fell far short of what would be expected based on availability for ITD construction prime contracts.

**Figure VI-5.**  
**Disparity indices for MBE/WBE**  
**utilization on federally- and**  
**state- funded transportation**  
**construction prime contracts**  
**under \$1 million, 2002–2006**

Note:

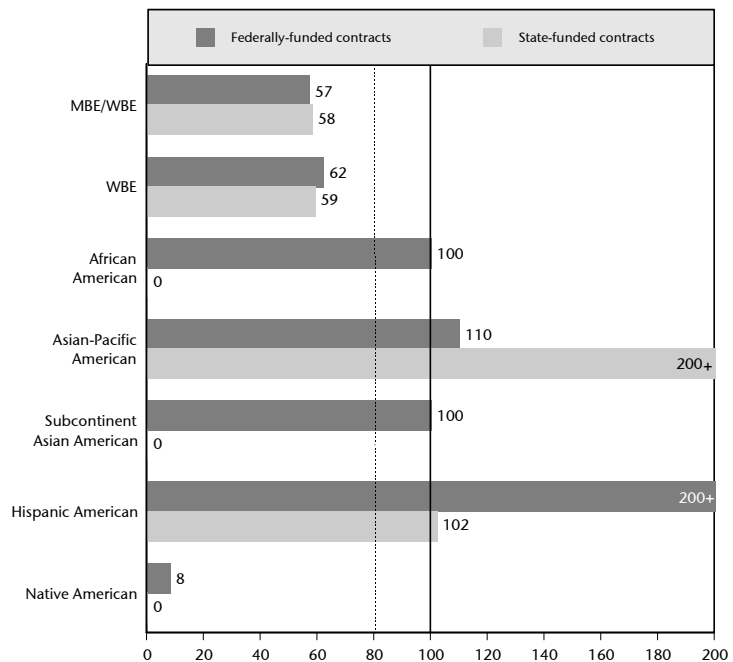
For contracts under \$1 million, utilization based on dollars retained by the prime contractor after deducting subcontract dollars.

For more detailed information, see Figures E-140 and E-143 in Appendix E.

181 federally-funded and 123 state-funded contracts under \$1 million.

Source:

BBC Research and Consulting.



### Analysis of Bidding on ITD Construction Contracts

BBC further explored why disparities in utilization of MBE/WBE prime contractors might be occurring by examining data on construction contract bids. BBC analyzed bidders on 444 ITD federally- and state-funded construction contracts from 2002 through 2006. ITD construction contracts typically go to the lowest bidder.

There were 176 different firms bidding on ITD construction contracts, of which 12 percent were WBEs and 5 percent were MBEs.

BBC found no difference in the winning percentage of WBEs and MBEs submitting bids compared with majority-owned firms. WBEs and majority-owned firms bid on the same sizes of contracts, and MBEs bid on smaller contracts, on average, than either majority-owned firms or women-owned firms.

## Conclusions for Construction Prime Contracting

Based on examination of ITD construction prime contracts, BBC prepared the following conclusions.

1. Overall, MBE/WBE utilization as prime contractors on ITD federally-funded construction projects is somewhat below what would be expected based on availability for these contracts. For state-funded contracts, there is a substantial disparity between utilization and availability of MBE/WBEs as prime contractors. It is difficult to interpret the disparity analysis for certain MBE groups due to the very limited availability of firms to perform construction prime contracts.
2. ITD widely informs potential prime contractors of opportunities to bid and has a relatively straightforward bidding process. Awards typically go to the lowest bidder.
3. Because of the time needed to build prime contractor capabilities, capital, bonding capacity and other resources, it may take longer to build strong MBE/WBE prime contractors than strong subcontractors.
  - The WBE firm that receives the largest volume of prime contract work among MBE/WBEs was founded by a husband and wife in the 1930s. Many of the other large prime contractors obtaining ITD contracts are old, established firms. Ten firms account for 58 percent of ITD contract dollars.
  - When BBC analyzed bid capacity of construction prime contractors based on length of time in business, there was a strong correlation between size of contracts firms would bid on and the age of the firm. There was no statistically significant relationship between “bid capacity” and race/ethnicity/gender of the business ownership (see Appendix F and Appendix H).
  - Race or gender discrimination that may have occurred many decades ago could still affect the current availability and bid capacity of minority- and women-owned firms.
4. ITD has implemented efforts to encourage development of minority- and women-owned construction firms. However, ITD’s past implementation of the Federal DBE Program has concentrated on participation of DBEs as subcontractors, only some of which have emerged as prime contractors. In the future, ITD may need to devote more efforts to directly developing MBE/WBE prime contractors.

ITD has limited tools to encourage MBE/WBE participation as prime contractors in its construction contracts. Reintroduction of the former DBE goals program would not be an effective remedy. ITD should consider the following actions:

- Even though BBC's analysis found that ITD already has many small construction contracts and that disparities in MBE/WBE utilization remain on small contracts, ITD should attempt to further unbundle its large contracts to encourage bidding by smaller MBE/WBEs.
- ITD should also provide intensive technical assistance to introduce firms to prime contracting roles on ITD projects and to build strong MBE/WBE prime contractors capable of completing larger projects. As discussed in Section V, specialized assistance to reservation-based Native American-owned firms may be needed.
- ITD should consider identifying a limited number of construction projects as joint venture "demonstration projects" for large contractors teaming with small, emerging prime contractors. Bidding would be limited pre-qualified joint venture partners.
- ITD can also encourage additional mentor-protégé efforts by Associated General Contractors, other associations and individual prime contractors.

Strong prime contractor development programs will be needed for many years in order to address the disparities identified in MBE/WBE participation as construction prime contractors. ITD should closely monitor MBE/WBE bidding and contract awards to gauge the success of these efforts, and assess whether stronger programs are needed in the future.